



ANNUAL REPORT

*for the fiscal year
ending March 31, 1999*

Nova Scotia Pay Equity Commission

During this reporting period

Minister
the Honourable Gerald O'Malley
the Honourable Russell MacKinnon

Deputy Minister
George Fox
Kevin McNamara

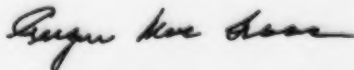
Chairperson
Lorraine Sheppard

The Honourable John James Kinley
Lieutenant Governor

May It Please Your Honour:

In accordance with section 9(3), Pay Equity Act, Chapter 337, RSNS 1989,
I have the honour to submit the Annual Report of the Pay Equity
Commission for the period April 1, 1998 to March 31, 1999.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Angus MacIsaac". The signature is fluid and cursive, with the first name "Angus" being more prominent.

Angus MacIsaac
Minister of Labour

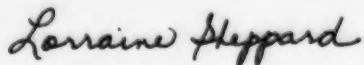


The Honourable Angus MacIsaac
Minister of Labour

Sir:

In accordance with section 9(3), Pay Equity Act, Chapter 337, RSNS 1989,
I have the honour to present to you the Annual Report of the Pay Equity
Commission for the period of April 1, 1998 to March 31, 1999.

Respectfully submitted,

A handwritten signature in cursive script that reads "Lorraine Sheppard".

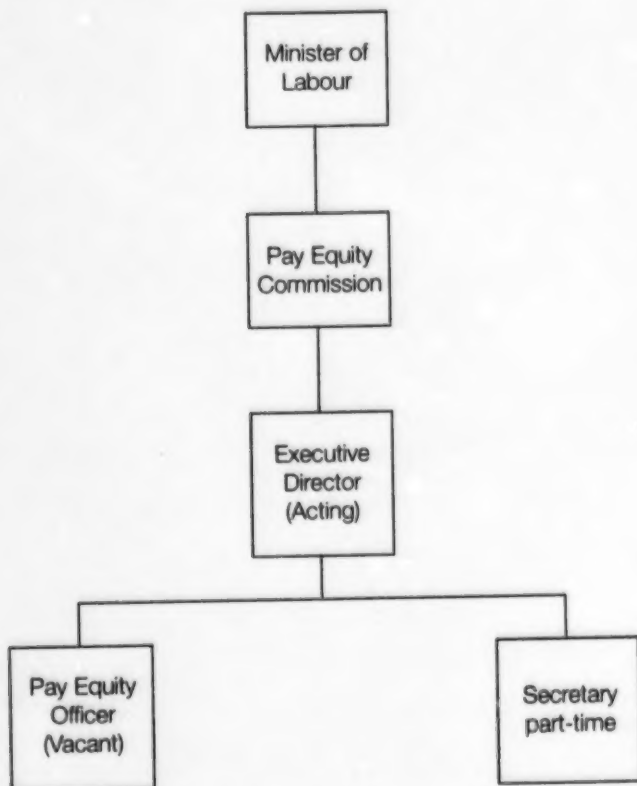
Lorraine Sheppard
Chairperson



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ORGANIZATIONAL CHART—Pay Equity Commission
April 1, 1998—March 31, 1999



PURPOSE OF THE PAY EQUITY ACT

The purpose of the Pay Equity Act is to increase the pay of employees in classes which are predominantly female where it is determined, by the process set out in the act, that, by reason of sex discrimination, those employees are paid less than they should be.

The Pay Equity Act sets a process to remove wage discrimination in jobs predominantly done by women. Because of systemic discrimination, these jobs are paid less than the jobs done traditionally by men. Public sector employers worked with their employees to evaluate jobs for skill, effort, responsibility, and working conditions to measure the job's value to the employer. If jobs are of equal value to the employer but are paid differently, the act defined how to adjust wages to remove pay discrimination.

PAY EQUITY COMMISSION MANDATE

The act establishes a Pay Equity Commission that is responsible for administering the Pay Equity Act. Specifically, the Commission is legislated to:

- monitor implementation of pay equity
- determine the manner in which employee representatives are selected
- determine those matters upon which an employer and its employee representatives fail to agree
- provide information respecting pay equity
- provide advice on implementing pay equity
- prepare and maintain statistics respecting pay equity
- prepare and disseminate educational material concerning pay equity

MEMBERSHIP OF THE PAY EQUITY COMMISSION

During the reporting period the Commission membership included:

Name	Location	Labour or Management Representative
Lorraine Sheppard Chair	New Waterford	labour
Margaret Blakeney Vice Chair	Kentville	management
Karen Field	Bridgewater	management
Mary Dee MacPherson	Springhill	labour
Kenneth Eisan	Halifax	management (retired)

Staff

Patricia Sherwood, as Acting Executive Director, supports the Commission. Responsibilities include providing support for the Commission's policy, administrative, and adjudicative roles, supporting research, education, and public information activities, and advising public sector employers about pay equity implementation.

ACTIVITIES OF THE PAY EQUITY COMMISSION

During the reporting period, the Pay Equity Commission held meetings on the following dates:

April 2, 1998

May 21, 1998

June 18, 1998

September 17, 1998

October 22, 1998

November 12, 1998

December 10, 1998

January 14, 1999

March 4, 1999

REPORT ON THE COMPLETION OF THE IMPLEMENTATION OF THE PAY EQUITY PROCESS

In keeping with the Pay Equity Commission's mandate to monitor and report on the implementation of pay equity, the Commission is pleased to report on the completion, by all public and broad public sector employers defined by the act, of their responsibilities for implementing the pay equity process.

A BRIEF HISTORY

In 1988, the government spoke of a proactive pay equity policy for the Nova Scotia public service and stated an intention to implement pay equity in both the public and private sectors. The Pay Equity Act, applicable to the public and broader public sector workforce, was enacted and received royal assent in May 1988. When the act was introduced, the government indicated that it would also consult extensively with individuals and corporations in the private sector about developing a private sector initiative.

In 1990, the Minister of Labour asked the Pay Equity Commission to consult and report on two issues: the comprehensiveness of the act and a future strategy for the development of pay equity in the private sector. The Commission consulted and reported on strategies to improve the comprehensiveness of the act. Consultation on extending pay equity to the private sector was initiated in 1990, but was not completed when support for the consultation diminished.

THE PURPOSE OF THE PAY EQUITY ACT

The purpose of the Pay Equity Act was to increase the pay of public sector employees in job classifications that were predominantly female and paid less than they should be. The Pay Equity Commission was created to monitor implementation of pay equity and to adjudicate when employers and employees failed to agree on implementation.

The act was specific about what had to be done and how much time it would take. Public sector employers were responsible for a six-year pay equity process, according to a legislated timetable. The timetable specified which sectors were to begin the process and when pay equity wage adjustments were to be completed.

PAY EQUITY TIMETABLE

	Process Begins	Evaluation System Chosen	Job Evaluation Completed	Adjustments to Begin	Adjustments Completed
Phase 1					
Civil Service					
Corrections Employees					
Highway Workers	Sept. 1/88	March 1/89	June 1 /90	Sept. 1/90	Sept. 1/94
Non-Civil Service					
employees of the V.G. and N. S. Hospitals					
Phase 2					
Crown corporations					
Hospitals	Sept. 1/89	March 1/90	June 1/91	Sept. 1/91	Sept. 1/95
School Boards					
Phase 3					
Universities					
Municipalities	Oct. 1/90	April 1/91	July 1/92	Oct. 1/92	Oct. 1/96
Municipal Enterprises					

PAY EQUITY PROCESS

The objective of pay equity is to correct gender-based wage discrimination. Most people—men and women—working in female-dominated job classifications (jobs where women traditionally make up 60 per cent or more of the labour force) are paid less than men and women working in male-dominated job classifications (jobs where men usually make up 60 per cent or more of the labour force). This is systemic wage discrimination based on gender.

Integral to the process was the requirement that it be jointly carried out by employer and employee representative groups. Public sector employers formed joint pay equity committees to make every reasonable effort to agree on the process. Pay would be increased when employee and employer representatives agreed, after application of the pay equity process, that systemic discrimination was the only reason the pay was less. When the employer and employee representatives failed to agree on any aspect of the process, the Pay Equity Commission became the adjudicator and the final decision-maker.

The pay equity process is complex: a two-stage process for each of three phases of employer groups, with several steps in each stage. The initial stage, evaluation, was to be completed within 26 months. It included:

- a full employee inventory filed with the Pay Equity Commission
- selection of a gender-neutral job evaluation system
- application of a job evaluation system and job to job comparison of the results

A full employee inventory includes the gender, the types of work, and the pay of all employees. Many of these people would work in gender-neutral job classifications, those in which neither gender predominated. The pay equity representatives would then select a system for determining the value of the remaining jobs to an employer, that is, they would assign values to all job classifications that were either female- or male-dominated. Value was based on skill, effort, level of responsibility, and working conditions. In Nova Scotia a point system was used for this purpose. Wage rates for female-dominated job classifications could then be compared to wage rates for male-dominated job classification that were comparable to or of equal value to the employer. This process identified where wage discrimination existed and which job classifications were entitled to wage adjustments.

The next step was to determine where wage adjustments were necessary and how much they would be. Wage rates for people working in underpaid female-dominated jobs classes would be raised to meet those of the comparable male-dominated job classes.

The second stage was adjusting pay for eligible employees. Employers had 48 months to fully implement pay equity. The majority of employers implemented wage adjustments at 25 per cent per year at the beginning of each of four years. The Pay Equity Commission monitored the payment of adjusted wages. By December 1996, all public sector employers completed the wage adjustment part of the pay equity process and in doing so had fulfilled all their obligations under the Pay Equity Act.

PAY EQUITY FOR PHASE ONE EMPLOYEES

Phase One of the pay equity process involved employees in the civil service, corrections employees, highway workers, and employees of the Victoria General Hospital and the Nova Scotia Hospital who were not civil servants. The employer was Her Majesty in the Right of the Province of Nova Scotia. Implementation was completed between September 1, 1988 and August 31, 1990. The resulting wage adjustments were made in four equal payment stages on September 1, 1990, 1991, 1992, and 1993. The employer completed all responsibilities under the Pay Equity Act September 1, 1994.

One hundred and eighty-eight classes were identified as dominated job classifications: 115 of these were male-dominated classes and the remaining 73 were female-dominated. Of the 73 female-dominated classes evaluated, 53 were eligible for wage adjustments. This represented 73 per cent of the female-dominated classes evaluated and provided adjustments to 6,684 employees, or 90 per cent of the employees in the female-dominated job classifications.

Twenty female-dominated classes did not receive wage adjustments because their pay rates exceeded the pattern of wages paid to male-dominated job classes of comparable value to the employer.

The increase to payroll as a result of implementation of the pay equity process was \$14.9 million, which represented 4 per cent of the total payroll for the employees covered under Phase One. The total salary adjustments ranged from \$404 to \$9,945. The hourly range of adjustment was from \$.22 to \$5.10. The wage adjustments were paid over 48 months, and the

first 25 per cent of the adjustment was made September 1, 1990. Consequential adjustments were made to 288 supervisors.

The average salary for female employees across the civil service bargaining units was 83 per cent of the average salary for male employees, the pay equity process changed the wage gap to 91 per cent of the salary earned by male employees.

The process for Phase One public sector employees was successful. This was in part due to the Pay Equity Act provisions being applicable to this employment situation. The civil service and the closely aligned non-civil-service employee groups were a large employee group. Provisions of the act were most applicable to an employer with a large work force.

The Phase One experience was a consultative process, completed on time, and had a result that both employers and employees were able to accept as fair and equitable. It was clear that both female- and male-dominated job classifications could be identified, evaluated, and compared. The employee group included a breath of traditional male and female functional and occupational groups, which provided a wide range of comparisons. Within this group there were well established and firmly entrenched job evaluation systems which have employed, in many areas, the principles of broad banding to expand the number of incumbents in broadly defined classes. The Pay Equity Act provision that defined which job classes capture the attention of the act could be applied to 90 per cent of Phase One employees. This meant that the incumbency rule of 10 was successfully applied to the Phase One workplace.

The pay equity process proved there was historical gender bias in the wage setting process by the employer and the implementation of pay equity made significant correction to the inequities that were identified. Although the process was effective for Phase One, it is likely that certain female-dominated classes were excluded because of the incumbency rule. As a consequence, continued inequities exist within the employee groups in this sector. It has been proven that gender-based pay discrimination exists. For female-dominated job classifications with fewer than 10 employees, this wage discrimination was not removed by the pay equity process applied as directed by the Pay Equity Act.

PAY EQUITY FOR PHASE TWO AND THREE EMPLOYEES

Phase Two

Crown corporations, hospitals, and school boards proceeded as scheduled with pay equity adjustments. One adjudication was required in Phase Two.

Lunenburg School Board Decision

February 12, 1992

In the matter of the determination of quantum and allocation of the adjustments pursuant to section 14 (1) (a) of the Pay Equity Act, the Pay Equity Commission made the following determination pursuant to section 7 (1) (c) of the act:

In cases where the parties have failed, within the time allowed under the Act, to agree respecting the orderly implementation, over a period exceeding four years, of the pay equity adjustments, the commission does not have discretion to determine one or another methodology for use in a particular workplace. The Act limits the commission to requiring compliance with Section 14 (1) (b). The commission interprets this provision to require implementation of the "phasing-in" or "stacking" method as opposed to the methodology referred to as "non-stacking." The provision requires continuing increments in the pay rate of the female-dominated class. These increments are to be effective in the year provided and to continue over the following years in question. These are supplemented in the successive years by the additional portions of the adjustment as each part comes into effect.

Phase Three

Municipalities

Four of 66 municipalities—City of Halifax, the City of Dartmouth, the Municipality of the County of Halifax, and the Town of New Glasgow—began the process on schedule in 1990. Pay equity wage adjustments were fully implemented as determined by the pay equity processes conducted for the City of Halifax and the City of Dartmouth by December 31, 1996. The provisions of the act did not require the Town of New Glasgow to progress to the pay equity adjustment phase.

The City of Halifax, City of Dartmouth, and the Municipality of the County of Halifax amalgamated on April 1, 1996 to form the Halifax Regional Municipality. The Halifax Regional Municipality became the employer

responsible for the pay equity process of the former municipal units. The municipality had completed final pay equity wage adjustments to all employees deemed eligible by November 1996.

The Commission held two adjudications on matters arising from the Phase Three employer pay equity process.

Municipality of the County of Halifax—Pay Equity Status for Lifeguards and Desk Staff July 21, 1995 Decision

In the Matter of an application by the Municipality of the County of Halifax to determine the status of lifeguards and front desk staff as per the definition of employee found within the Pay Equity Act and a further determination of the proper application of the definition of classification to the job control desk / front desk staff employed at Sackville Sports stadium and Cole Harbour Place.

Issue One: The issue to be determined with regard to lifeguards and desk staff is whether they are "regular casual" employees within the meaning of the Act and thus properly included in the pay equity process for the Municipality.

In summary, The Commission Hearing Panel is satisfied that the lifeguards and desk staff employed by the municipality are "regular casual" employees by virtue of the fact that they exceeded the characteristics of a casual employee. The Commission Hearing Panel is also satisfied that the majority of the characteristics of a "regular casual" employee exist in this case. There is evidence of a schedule, albeit not designed that far in advance but there is evidence of advance notice. There is a commitment to provide work although not for a specific number of hours. There is no argument that there is a "call-in" list process, nor that the employees may decline work, however there is clear evidence of a reciprocal relationship and mutual obligation between the majority of these employees and the employer. The integration into the workplace, the regularity of the work as well as the duration of the work experience, albeit interrupted by program scheduling, indicate more than a casual relationship for these employees with this employer.

The evidence presented identifies that the duration of the work for many of these employees exceeds that of truly casual employees. There is more of a relationship than the filling of an unforeseen and unpredicted need by the employer. These employees are performing job

functions which continue to exist. This is not a situation of a random or chance work opportunity. There is also clear evidence supporting the frequency of re-engagement. For employees who are performing satisfactorily there is evidence of a pattern of repeated work cycle.

A review of all of the information before the Commission Hearing Panel leads to the conclusion that there is a pattern of employment which qualifies as an ongoing and mutual arrangement between the employees and the employer. The employees have more than a fleeting connection with the employer. The Commission Hearing Panel finds that these employees do meet the definition of "regular casual" employee under the Pay Equity Act and therefore are to be included in the pay equity process of the municipality.

Issue Two: The issue to be determined with regard to desk staff at both Sackville Sports Stadium and Cole Harbour Place is whether they were properly combined in the same employee classification.

The Pay Equity Commission is satisfied that the desk staff at Cole Harbour Place and at Sackville Sports Stadium are properly combined in the same classification for the purpose of the pay equity process. Although minor differences exist in the specific job duties, they are not of a substantive nature and therefore not worthy of consideration to negate these jobs being combined for pay equity purposes. The Commission Hearing Panel considers these jobs to have the same range of salary rates, in that they are both paid at minimum wage rates. In addition, the Commission Hearing Panel considers the job titles to be the same. Although different words are used in the title, the words are commonly used interchangeably and do not constitute a different meaning, therefore they are considered to be the same for the purposes of defining a title for the classification for the purposes of the pay equity process.

The Pay Equity Hearing Panel finds that these employees meet the requirements set out in the Act for meeting the definition of "classification." Therefore, the Commission Hearing Panel finds that these employees were properly combined into a single classification for the purposes of the pay equity exercise. As such, these employees are to be included in the pay equity process for the municipality.

Conclusion: The Commission concludes that lifeguards and desk staff are employees and that desk staff are properly combined in the same classification.

The Municipality subsequently made a *certiorari* application to the Nova Scotia Supreme Court for judicial review of the Pay Equity Commission's decision regarding the eligibility of lifeguard and desk staff job classifications as employees under the Pay Equity Act. The June 17, 1996 Supreme Court of Nova Scotia decision refused the application and declined to quash the Commission's decision. The Pay Equity Commission was awarded costs.

City of Dartmouth Decision

May 6, 1993

In the matter of an application by the Executive Director of the Nova Scotia Pay Equity Commission for an order requiring the City of Dartmouth to rehire its crosswalk guards and to remunerate the crosswalk guards in accordance with the findings of the pay equity process, the Pay Equity Commission concluded:

The Commission accepts that Eagle (Securities) is now the Employer but finds that the Pay Equity Act, properly interpreted, prohibits the contracting out of services performed by persons in positions identified as the proper recipients of pay equity adjustments if the effect is to reduce the pay below the level of what these persons would have received had their services not been contracted out.

It is the Commission's view that the process engaged in by the City and its employees, as with all joint processes administered under the Pay Equity Act, are not concluded until the final adjustments are received by the female dominated classes entitled to receive such adjustments.

Accordingly, the City of Dartmouth is ordered to ensure that the lifeguards are remunerated at the rates determined by the pay equity process and to ensure that the pay adjustments are made retroactive to the originally scheduled implementation date of October 2, 1992.

The Municipality subsequently made a *certiorari* application to the Nova Scotia Supreme Court for judicial review of the Pay Equity Commission's decision. The March 17, 1994 Supreme Court of Nova Scotia decision refused the application and declined to quash the Commission's decision.

The City of Dartmouth appealed to the Nova Scotia Court of Appeal. The appeal was dismissed noting that the Pay Equity Commission committed no reviewable error as to fact, law, or jurisdiction, as Justice Hall of the Nova Scotia Supreme Court found, and he committed no reversible error in upholding its decision and order. Once the City commenced the

pay equity process by statute on October 1, 1990, the City was bound by it and lacked jurisdiction to contract out with respect to benefits required under the act for affected employees. Subsequently, the City applied for leave to appeal to the Supreme Court of Canada and the Court refused leave in January 1995.

Copies of the Pay Equity Commission decisions are available on request by contacting the Pay Equity Commission office at (902) 424-8596.

Universities

The 11 universities listed in Schedule B of the Pay Equity Act began the pay equity process on October 1, 1990. The process proceeded in four universities: Dalhousie, Saint Mary's, Acadia, and St. Francis Xavier. The other universities did not have to proceed with the pay equity process because the job classifications had fewer than 10 incumbents, which meant that job classification did not meet the definition of job classification under the act. Pay equity adjustments were completed by October 1996.

Municipal Enterprises

Municipal enterprises, a diverse group of autonomous agencies, boards, commissions, associations, or corporations with a majority of the board of directors or board of management appointed by municipalities to provide a service, were reviewed for pay equity purposes. No municipal enterprises were required to proceed with the pay equity process.

NOVA SCOTIA PUBLIC SECTOR PAY EQUITY RESULTS

	Total Employees	Males	Females	Total Number Adjusted
Phase I				
Civil Service Commission				
Corrections & Highway Workers				
Non-Civil Service VG &				
N. S. Hospital employees				
Total Phase I	12,453	6,086	6,367	6,684
Phase II & III (*)				
Crown Corporation	3,240	2,438	802	243
Hospitals	12,815	1,690	11,125	740
School Boards	16,082	6,733	9,349	1,169
Universities	6,109	3,421	2,688	372
Municipalities	6,839	4,401	2,438	360
Total Public Sector Phase II & III	45,085	18,683	26,402	2,884
Total Public Sector Phases I, II & III	57,538	24,769	32,769	9,568

ISSUES FOR ACHIEVEMENT AND MAINTENANCE OF PAY EQUITY

The 1988 Pay Equity Act established a process that attempted to correct gender-based wage discrimination in the public sector. Government knew, in 1991, that the act would not achieve the expected pay equity results. The Pay Equity Act created but did not deliver on expectations for economic justice. Because the legislative process was problematic in application to smaller workplaces only 10 per cent (or 2,600) of the 26,400 females employed in municipalities, universities, school boards, hospitals, and crown corporations received adjustments. The cost was roughly \$2 million instead of the projected \$35 million. Private sector pay equity was not instituted as government promised.

The Pay Equity Commission made recommendations in 1991 and 1994 to amend the act's provisions to provide wider access to more employees. Since the act was not amended, pay equity results have been limited. Proven gender-based wage discrimination continues in the public sector. Pay equity-adjusted wage rates are at risk because employers do not have to maintain the rates that were achieved as a result of the pay equity legislation.

Public consultation and monitoring of the act by the Pay Equity Commission identified pay equity barriers that include the limitations of the 10/60 rule for access to the pay equity process, the limitations of section 17 ("Achievement of Pay Equity") and the absence of proportional value provisions. Commission recommendations for legislative amendments, if enacted, would have modified the process to achieve pay equity for most people working in female-dominated job classes in the broad public sector.

The impact on the broader public sector was restricted. The majority of public sector employers (hospitals, municipalities, universities, and school boards) were not required to undertake the pay equity process because of the restrictiveness of the incumbency rule. The incumbency rule required only job classifications with 10 or more employees be reviewed under the pay equity process. As a result, only two of 44 hospitals and three of 66 municipalities were required by the act to proceed with pay adjustments. No employers voluntarily extended the provisions of the Pay Equity Act when the restrictive incumbency rule provided an opportunity to discontinue the pay equity exercise.

The recessionary economic climate of the 1990s raised barriers for initiatives like pay equity. Pay equity seeks to address historical systemic sex discrimination in pay practices. The argument must be made that

women in female-dominated jobs can no longer afford to be underpaid for work that is of equal value to their counterparts in male-dominated job classes. The questions to be answered are:

- once discrimination has been identified does it have to be corrected?
- once the discrimination is removed does pay equity have to be maintained?

It is clear from the public sector exercise that wage discrimination is a reality. It must be addressed.

Recognizing that identified wage discrimination continues to exist in the Nova Scotia public and private sector, the Commission has continued to ask a series of Ministers of Labour to provide for a public consultation to define the next step for pay equity. In the broader public sector, wage discrimination was corrected for some job classifications by the pay equity process but following the wage adjustment phase, discrimination was reinstated by the employer by contracting out the services without maintaining the pay equity adjusted wage rates. The act provides no ability for the Pay Equity Commission to address this maintenance problem.

Pay equity, once achieved, is vulnerable to erosion as workplace hierarchies evolve. To secure and maintain equity takes either unique employer commitment or a legislated responsibility shared between the employer and the employee representative or bargaining unit.

Under current legislation, the pay equity adjustments agreed to by employers and employees become the formalized record of equitable pay for specified male- and female-dominated job classes. Public sector pay equity was created without a legislative requirement to keep future compensation practices consistent with pay equity agreements. If employees are not satisfied that the employer and the collective bargaining process are maintaining pay equity, they have no recourse under the act.

The Nova Scotia act established a pro-active audit process within an established pay equity process time frame and is then silent on the matter. The Pay Equity Commission was not given authority beyond the achievement phase to monitor compensation practices in relation to pay equity.

The Commission's opinion is that a broad, pervasive obligation for employers to prevent discriminatory elements encroaching on the salary-setting practices of an organization is required. No employer or bargaining unit should have the ability to bargain for or agree to compensation practices that are inconsistent with pay equity maintenance. Employees need to have a legal right to complain to the Pay Equity Commission if they believe that compensation practices are not in compliance with the act.

CONCLUSION

The Pay Equity Commission continues to research pay equity issues and advises the Minister of Labour on matters pertaining to gender-based wage discrimination correction.

Public consultation (1990) and Pay Equity Commission monitoring (1989-95) clearly supported legislative changes to correct the access problems and to maintain pay equity gains. In a 1996 poll, Nova Scotians identified equal pay/pay equity as the most important issue facing women ... more important than violence, employment, and child support. Seventy-four per cent of Nova Scotians polled felt that women with equal skill levels are paid less than men. This poll mirrored the results of polls in 1992.

Systemic discrimination in wages exists in Nova Scotia. The Pay Equity Commission sees the challenge to removing gender-based wage discrimination for public and private sector employees in Nova Scotia to be finding a way for pay equity initiatives to continue in an effective, affordable, and sustainable manner.

The Pay Equity Commission, during this reporting period, again recommended to the Minister of Labour that the Pay Equity Commission be given a mandate to conduct a targeted stakeholder public consultation on pay equity. The objective of the consultation would be a report to the Minister of Labour identifying the impacts of a pay equity initiative and defining a pay equity model to fully implement public sector pay equity and address pay equity in the private sector.